

REMARKS

These remarks are responsive to the Office Action dated April 19, 2006. Currently claims 1-7 and 12 are pending with claims 1 and 12 being independent. Claims 8-11 are cancelled without prejudice or disclaimer. Claim 12 is added. Support for this claims is found in the specification on page 15, line 13 to page 19, line 9.

In the April 19, 2006 Office Action, the Examiner issued a restriction requirement under 35 U.S.C. 121. The Examiner restricted claims between Group I containing claims 1-7 and Group II containing claims 8-11. On March 23, 2006 during a telephone conversation with the Examiner, the Applicants' undersigned attorney provisionally elected claims 1-7 in Group I for further consideration by the Examiner. The Applicants respectfully affirm their election of claims 1-7 for further consideration and, hereby, cancel claims 8-11 without prejudice or disclaimer. A separate request under 37 C.F.R. 1.48(b) to amend inventorship of this application is submitted herewith.

In the April 19, 2006 Office Action, the Examiner rejected claim 1 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2002/0040405 to Gold (hereinafter, "Gold") in view of U.S. Patent No. 6,202,070 to Nguyen (hereinafter, "Nguyen"). This rejection is respectfully traversed.

In the April 19, 2006 Office Action, the Examiner objected to claims 2-7 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

35 U.S.C. 103(a)

In the April 19, 2006 Office Action, the Examiner rejected claim 1 as being unpatentable over a combination of Gold and Nguyen. This rejection is respectfully traversed.

In the April 19, 2006 Office Action, the Examiner stated that Gold discloses all elements of claim 1 but does not disclose supervising the replication of files. The Examiner further stated that Nguyen teaches supervising the replication of files. (Office Action, page 6). However, the combination of Gold and Nguyen does not disclose, teach or suggest all elements of claim 1, as the arguments below demonstrate.

Claim 1 recites, *inter alia*, a data protection system for protecting files on a fileserver, the system comprising: a primary repository in communication with the fileserver via a network, the primary repository having: a data mover in communication with the primary repository node API and operative to supervise the replication of files from the fileserver to the primary repository node; a location component in communication with the data mover and operative to store file location data; a directory service operative to maintain storage state for the primary repository node; and a node manager in communication with the location component and with the directory service and operative to manage primary repository node storage capacity and performance.

As the Examiner pointed out in the April 19, 2006 Office Action, Gold does not disclose a data mover operative to supervise the replication of files from the file server to the primary repository node. However, in addition to failing to disclose this element, Gold also does not disclose a location component in communication with the data mover and operative to store file location data; a directory service operative to maintain storage state for the primary repository node; and a node manager in communication with the location component and with the directory

service and operative to manage primary repository node storage capacity and performance, as recited in claim 1.

Gold discloses a bulk data repository for remote storage of bulk data from a plurality of computer networks that is accessed over a plurality of communications links. (Gold, Abstract). Further, Gold stores individually received data transmission packets in locations allocated by a management module. The locations are allocated sequentially based on a date and time stamp on the received packet. (Gold, page 6, para. 0097). This is in contrast to a location component operative to store file location data, as recited in claim 1. Gold stores actual data based on the time associated with that data. Whereas, claim 1's location component stores file location data.

Further, Gold teaches a directory structure control module that stores file location data and time stamp data in a database location corresponding to the individual customer from which the data transmission file has been received. (Gold, pages 6-7, para. 0104). This is different than a directory service operative to maintain storage state for the primary repository node. The directory service of claim 1 does not store file location data or file's time stamp. File location storage and time stamp data are stored by the location component, which is separate from the directory service, as recited in claim 1. Hence, Gold does not disclose claim 1's directory service.

Gold discloses operating system 604 that manages data storage capacity in a repository. (Gold, page 7, para. 0111). The operating system 604 includes directory structure control 605 for controlling a structure of file directories, management 606 for allocating received data transmission packets, and delta block merging 607. (Gold, page 5, para. 0087; page 6, para. 0097; FIG. 6). Further, operating system 604 names and stores files, adds its own attributes to the received data, maintains security of data, and stores data in blocks. (Gold, pages 5-6, paras.

0089-0092). However, Gold does not disclose, *inter alia*, a node manager operative to manage primary repository node storage capacity and performance, as recited in claim 1. Gold's operating system 604 performs basic functions, such as storing and maintaining security of data, but it does not manage performance of the repository node, as recited in claim 1. Hence, Gold does not disclose all elements of claim 1.

In the April 19, 2006 Office Action, the Examiner stated that Nguyen discloses supervision of replication of files. Nguyen discloses a system of software distribution in computer manufacturing which manages and distributes software at a remote manufacturing site. (Nguyen, Abstract). Nguyen includes software routines that work with replication techniques to distribute the software from software engineering groups to local server databases at the remote computer manufacturing facilities. (Nguyen, Col. 7, lines 23-26). Nguyen stores the files on a database server, but outside the database structure. Separate routines manage the replication of database and data and their associated software files. (Nguyen, Col. 7, lines 29-32). This is in contrast to the data mover operative to supervise the replication of files from the file server to the primary repository node, as recited in claim 1. Nguyen uses various software routines located outside the database structure to manage replication of files. This is different than claim 1's supervision of replication of files within the same repository. Thus, Gold and Nguyen do not teach or suggest all elements of claim 1 and claim 1 should be allowed.

Improper to combine the references

It is improper to combine Gold and Nguyen to produce the claimed invention. Gold relates to gateway device for remote file server services. The device includes a bulk data repository for remote storage of bulk data from a plurality of computer networks, where the repository can be accessed over communication links. (Gold, Abstract). In contrast, Nguyen

teaches a computer manufacturing system architecture with enhanced software distribution functions. Nguyen further relates to a software distribution system for managing and distributing software from release by a software engineering group to installation at a remote manufacturing side. (Nguyen, Abstract). The technology disclosed in Gold belongs to a class of “electrical computers and digital processing systems: multicomputer data transferring” and a subclass of “computer-to-computer data streaming” (709/231). In contrast, the technology disclosed in Nguyen belongs to a class of “data processing: database and file management or data structures” with a subclass of “application of database or data structure (e.g., distributed, multimedia, image)” (707/104). Clearly, Gold and Nguyen belong to different technological arts. Hence, it is improper to combine Gold and Nguyen, as the Examiner attempted in the April 19, 2006 Office Action without some disclosed motivation other than the present application. See, MPEP 2143.01:

“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.” *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.).

Even if one were to combine Gold and Nguyen, the present invention is not realized. The combination of Gold and Nguyen discloses a system for software distribution that receives data transmission packets and stores them in a database based on a date and time stamp associated with each packet. However, the combination of Gold and Nguyen does not disclose, teach or suggest, *inter alia*, a data protection system for protecting files on a fileserver, the system comprising: a primary repository in communication with the fileserver via a network, the primary repository having: a data mover in communication with the primary repository node API

and operative to supervise the replication of files from the fileserver to the primary repository node; a location component in communication with the data mover and operative to store file location data; a directory service operative to maintain storage state for the primary repository node; and a node manager in communication with the location component and with the directory service and operative to manage primary repository node storage capacity and performance, as recited in claim 1.

Thus, even the improper combination of Gold and Nguyen does not render claim 1 obvious. As such, this rejection is respectfully traversed. The Examiner is requested to reconsider and withdraw his rejection of claim 1.

In April 19, 2006 Office Action, the Examiner objected to claims 2-7 as being dependent on a rejected base claim. Even though not rejected, dependent claims 2-7 are patentable over a combination of Gold and Nguyen for at least the reasons stated above with respect to claim 1.

Independent claim 12 is patentable over the combination Gold and Nguyen for at least the reasons stated above with respect to claim 1. Further, claim 12 recites a data protection system for maintaining historical backup copies. Gold patent deals with remote offices' gateway servers that communicate with a data repository, which holds primary storage data at a central location. Further, Gold's system maintains primary storage data. Whereas, present application is directed to retaining primary storage data and a repository for maintaining backup data in a form of a history of changes to files over time. Gold's system does not disclose multiple data repositories, whereas the present invention is configured to replicate backup data between at least two repositories. The present invention also includes a fileserver that can act as a primary storage and a repository for storing backup history.

No new matter has been added.

The claims currently presented are proper and definite. Allowance is accordingly in order and respectfully requested. However, should the Examiner deem that further clarification of the record is in order, we invite a telephone call to the Applicants' undersigned attorney to expedite further processing of the application to allowance.

Applicants believe that no additional fees are due with the filing of this Amendment. However, if any additional fees are required or if any funds are due, the USPTO is authorized to charge or credit Deposit Account Number: 50-0311, Customer Number: 35437, Reference Number: 25452-014.

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Respectfully submitted,



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